

Statement of
KEITH R. KLEIN
EXECUTIVE VICE PRESIDENT
& CHIEF OPERATING OFFICER
TRANSPORT CORPORATION OF AMERICA

On Behalf of
American Trucking Associations, Inc.

Before the
U.S. HOUSE OF REPRESENTATIVES

COMMITTEE ON
TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEE ON HIGHWAYS AND TRANSIT

HEARING ON
COMPREHENSIVE SAFETY ANALYSIS 2010:
UNDERSTANDING FMCSA'S NEW SYSTEM OF MOTOR
CARRIER OVERSIGHT

JUNE 23, 2010



Driving Trucking's Success

American Trucking Associations
950 N. Glebe Road, Suite 210
Arlington, VA 22203-4181

Introduction

Chairman DeFazio, Representative Duncan, members of the Subcommittee, my name is Keith Klein and I am the Executive Vice-President & Chief Operating Officer of Transport Corporation of America (Transport America), located in Eagan, Minnesota. Transport America is a truckload motor carrier comprised of more than 1,100 trucks and drivers operating in the 48 contiguous states. Safety is our cornerstone value at Transport America. In our view, nothing we do is worth endangering the motoring public or ourselves.

Today I am testifying on behalf of the American Trucking Associations (ATA). ATA is the national trade association for the trucking industry and is a federation of affiliated State trucking associations, conferences, and organizations that together have more than 37,000 motor carrier members representing every type and class of motor carrier in the country. Thank you for the opportunity to testify.

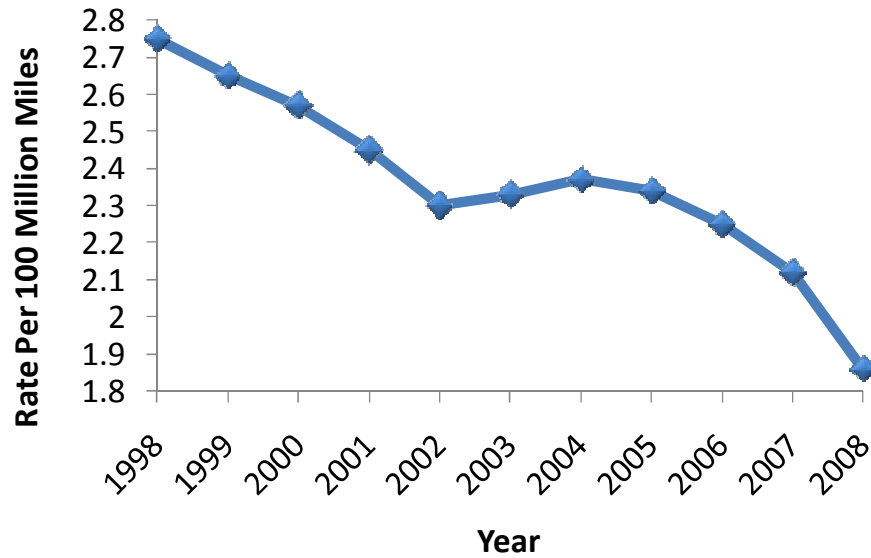
The Industry's Safety Record

Mr. Chairman, as you well know, ATA is a strong advocate of highway safety initiatives. Our 18 point safety agenda calls for a variety of programs and initiatives to make highways safer for all motorists. For instance, ATA supports increased use of red light cameras and automated speed enforcement, graduated licensing in all states for teen drivers and more stringent laws to reduce drinking and driving. We have a history of supporting such initiatives that have since become reality such as the Motor Carrier Safety Assistance Program, the Commercial Drivers License (CDL), mandatory drug and alcohol testing, and FMCSA's new Pre-Employment Screening Program.

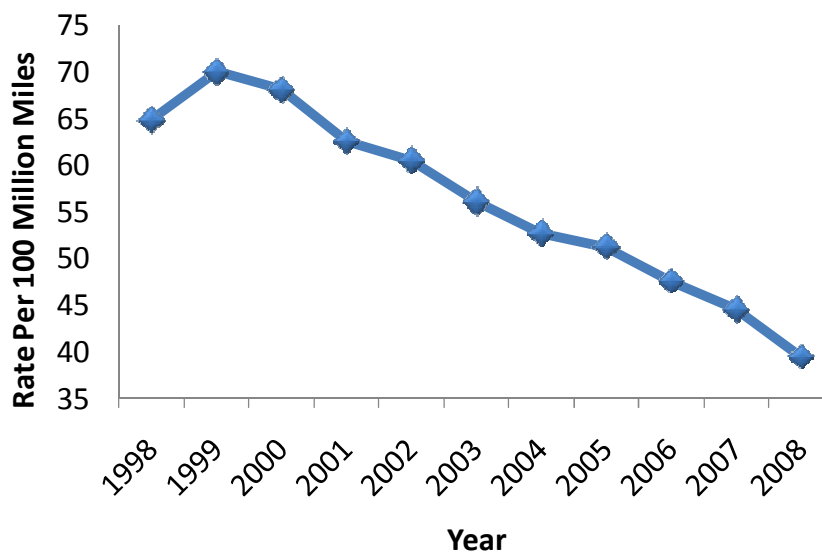
The trucking industry's commitment to safety is also evident in its impressive safety record. In short, the trucking industry is the safest it has ever been and continues to get even safer. For example:

- The truck-involved fatality rate has decreased 66 percent since 1975, the first year the USDOT began keeping records.
- Over the past decade alone, the truck-involved fatality rate has dropped by 32 percent.
- In actual numbers, there were 1,166 fewer fatalities in 2008 than in 1998—remarkable progress in light of the trucking industry operating 1.3 million additional trucks and 31,000,000,000 more miles in 2008 (compared to 1998).
- The truck-involved injury rate has decreased 58 percent since 1988, the first year USDOT began keeping records.
- Over the past decade alone, the truck-involved injury rate dropped by 39 percent.
- In 2008, the truck-involved fatality and injury rates fell to their lowest levels since USDOT began keeping statistics.
- **More importantly, in 2008 the number of injuries and fatalities in truck-involved crashes reached their lowest levels since USDOT began keeping records.**

**LARGE TRUCK FATALITY RATE
PER 100 MILLION VEHICLE MILES TRAVELED
1998-2008**



**LARGE TRUCK INJURY RATE
PER 100 MILLION VEHICLE MILES TRAVELED
1998-2008**



ATA's Support For CSA 2010

Mr. Chairman, today I will speak about the trucking industry's support for CSA 2010 and its goal of targeting unsafe operators so as to change their behavior. I will also explain some of ATA's substantive concerns with the current design of CSA 2010 and how these flaws will profoundly impact the industry and highway safety, if not corrected. Finally, I will offer some suggestions for ways that CSA 2010 can be improved so that FMCSA and ATA can more effectively achieve our mutual objective of removing unsafe operators from the highway and making our roads safer for everyone.

ATA supports the CSA 2010 initiative since:

- 1) It is primarily based on safety performance rather than compliance with paperwork requirements;
- 2) It focuses limited enforcement resources on specific areas of deficiency (rather than comprehensive on-site audits); and
- 3) It will eventually provide real-time, updated, safety performance measurements.

All three of these attributes address long-standing problems with FMCSA's current monitoring and enforcement program.

Under the current process, carrier safety fitness is based solely on the results of on-site compliance reviews, which focus on carrier records. In contrast, CSA 2010 will be based largely on performance measures such as roadside inspection violations and crashes.

Also, under the current process, FMCSA addresses carrier deficiencies by conducting comprehensive on-site audits of all areas of a carrier's operation, not just those that are thought or known to be deficient. In contrast, CSA 2010 calls for targeted interventions focused on known deficiencies.

In addition, the hope is that CSA 2010 will eventually be able to provide real-time, updated safety performance measurements regularly (e.g., monthly). Under the current process, a carrier's safety rating is assigned indefinitely following an on-site compliance review and is not updated until FMCSA conducts a subsequent review, which can literally be decades later.

Finally, I would like to point out that FMCSA deserves to be applauded for its development and implementation of CSA 2010 to date. Clearly, the architects of the program put a great deal of thought and research into it. For example, a core component of CSA 2010, weighting violations based on their relationship to crashes, represents a good first step in the right direction. Also, the agency has gone to great lengths to test the program in several states, developed and implemented an extensive outreach/education program, and has demonstrated a willingness to accept stakeholder input.

ATA's Primary Concerns

However, ATA has a number of serious concerns relating to how CSA 2010 will work that, if not addressed, will have a dramatic impact on motor carriers and on highway safety. We are particularly concerned with the three issues outlined below since we believe they will have the greatest impact on motor carriers and highway safety in general. Our intent in raising these concerns is two fold: the first is a matter of safety, to ensure that unsafe carriers are selected for interventions, and the second is a matter of equity, to ensure that relatively safe carriers are not selected for interventions.

Crash Accountability

Our first primary concern is that in measuring safety performance, CSA 2010 considers all DOT-defined crashes - including those for which the motor carrier could not reasonably be held accountable. This is problematic since many truck accidents are two vehicle crashes that are caused by the driver of the other (non-commercial) vehicle involved. Accordingly, a carrier involved in a number of crashes for which it was not responsible is seen as just as unsafe as a like-sized carrier who was involved in the same number of crashes – but caused them.

FMCSA has signaled its intention to revise the methodology to consider only those crashes for which the motor carrier could reasonably be held accountable. In order to do so, FMCSA will need to review thousands of crash reports and make determinations based on each. We are grateful for FMCSA's willingness to take on this large - albeit necessary - task. However, it is clear that this change will not be made before the planned initial implementation date, just a few months from now. Also, since CSA 2010 is based on 24 months of historical data, we are doubtful that FMCSA will be able to review the entire two-year backlog of crash records and correct the system's *Crash Indicator* scores accordingly.

It is important to acknowledge that given the inherent problems with underlying crash data, FMCSA has pledged to redact each motor carrier's *Crash Indicator* scores from public view. However, unless the data are corrected before the initial implementation date, FMCSA will continue to use this flawed data to prioritize and target carriers for enforcement interventions. This should concern everyone interested in truck safety, government, and industry.

Exposure Measurement – Power Unit Count vs. Vehicle Miles Traveled

Our second primary concern is with respect to how CSA 2010 measures carrier exposure for the purposes of evaluating each carrier's relative performance in several categories. Specifically, under the current methodology FMCSA uses a count of each carrier's power units (or trucks) as the measure of risk exposure rather than the total number of miles these vehicles travel. As a result, carriers who employ greater asset utilization will have more true exposure to crashes and other safety related events, but will be compared to carriers who have less exposure – though the same number of trucks. This problem is especially acute for motor carriers that utilize team and longer-haul operations since their vehicles travel more miles and, as a result, have more exposure to adverse safety events.

In response to ATA's concerns, FMCSA has acknowledged that the sole use of power units as a measure of exposure can create an inequity for some motor carriers. Accordingly, the agency seems willing to consider mileage data, at least in part, as an exposure measure. However, FMCSA has not yet published a revised formula. As the CSA implementation date draws nearer, ATA grows increasingly concerned that whatever formula the agency chooses to use will not have been tested for its effectiveness, or its equity.

Warnings for Moving Violations

Our third major concern is that CSA 2010 counts all moving violations reported on roadside inspection reports, regardless of whether or not a citation was ultimately issued to the driver for the violation. This presents several problems for the industry.

First, since these are merely warnings, there is no due process procedure for carriers or drivers to challenge these violations. Regardless of their validity, they stay on the carrier's record and are used to measure the carrier's relative safety performance.

Second, in some states law enforcement officers must have probable cause in order to stop a truck and conduct a vehicle inspection. In these states, it is common practice for enforcement officials to stop trucks for trifling speeding offenses (e.g., 3 mph over the limit), and issue warnings as justification to conduct inspections. As a result, carriers operating in these states are disproportionately impacted and likely have worse driver violation scores than carriers who operate elsewhere (see chart attached). For example, based on data we obtained from one large, national motor carrier, trucks operating in Indiana – a probable cause state – are four times more likely to receive a warning for speeding than carriers operating in non-probable cause states.

Additional Concerns

While these three issues reflect our primary concerns with the CSA 2010 methodology, I must point out that we have a number of other concerns as well. Specifically, these issues are:

- How the severity weights for violations are assigned;
- Measuring carriers based on violations committed by drivers who have since been terminated;
- Measuring carriers based on citations that have been dismissed in a court of law;
- Inequitable measurement of open deck/flatbed carriers;
- Overly broad peer groups; and
- Inconsistent State enforcement practices.

How Severity Weights For Violations Are Assigned

One fundamental component of CSA 2010 is the assignment of severity weights to various violations. In short, the system assesses a weight of between 1 and 10 to each possible violation such as inoperable lights, improper load securement, etc. These weights were assigned – in theory – based on each violation’s relative relationship to crashes.

On the surface this method seems logical and appropriate. However, in the absence of good data tying particular violations to crashes, FMCSA assigned weights by grouping all violations of a particular type into broad categories without regard for the variance in crash relationship between violations within the category. As a result, many of the assigned severity weights are nonsensical and inappropriate.

For instance, because load shift has a strong relationship to crash risk, all load securement violations bear the maximum weight –10 – in the system. While it may make sense to assign a weight of 10 for failing to “properly secure a load,” - especially if that load is exceptionally large and hazardous - it does not make sense to assign the maximum weight to some other violations in that group, such as “failing to red flag a load” that extends beyond the bed of the vehicle.

In contrast, some violations in other groups bear relatively little weight, though intuitively they should bear more. For instance, “Improper Transport of Explosives” bears a weight of 2, and “Inadequate Brakes” bears a weight of 4.

An additional concern in this area is the nature of the relationship between certain violations and crashes. While it is logical to evaluate the relationship between violations and crashes, it is important to consider whether or not the relationship is causal or correlational. For instance, load shift may be a consequence of a crash, not the cause of it, especially when the truck driver is forced to take an evasive maneuver because of a critical error made by the driver of another vehicle.

Another example of the illogical assignment of severity weights is overweight violations. Currently, all such violations bear the same weight in the system, without regard to the severity of the offense (be it 100 pounds or 10,000 lbs over the limit). However, one would think that more severe overweight violations would have a stronger tie to crash risk.

The assignment of overweight violations is indicative of another fundamental flaw with the methodology – the assumption that all violations have a relationship to crashes. For example, some overweight laws exist to prevent pavement damage - not because carrying heavier weights on these roads makes a crash more likely. Similarly, some purely paperwork violations, such as a driver's failure to write his employer's address on his daily log, count against the motor carrier in the system.

Continued Use of Violations Committed By Drivers Who Have Been Terminated

An additional area of concern is CSA 2010's continued use of violations committed by drivers who have since been terminated. In effect, FMCSA still counts these violations against the carrier, even if the carrier took steps to remove the driver from service. FMCSA's perspective is that it is appropriate to do so since the violations are a reflection on the carrier's screening, training, and management controls. However, motor carriers are eager to point out that the driver's termination is evidence that the motor carrier has an effective, functioning, safety management control in place, specifically: a progressive disciplinary program.

In short, failing to give the motor carrier at least partial credit for terminating problem drivers does not give motor carriers the additional incentive to do what is in the shared interest of industry and government: removing unsafe drivers from the road. FMCSA would be better served by evaluating each motor carrier's current safety culture in measuring future crash risk. In doing so, the agency would be adopting a strategy employed by leading safety professionals, insurers and others who are taking a progressive approach to safety management.

ATA agrees that it is inappropriate to suggest that violations committed by these drivers be completely erased from the carrier's record upon termination. However, they should be weighted less. Alternatively, carriers should be given positive credits for terminating problem drivers.

Continued Use of Dismissed Citations

ATA has a similar concern with the use of dismissed citations. If an alleged violation cited against a driver or motor carrier is ultimately dismissed by a court of law, CSA 2010 continues to count the violation against the motor carrier. Here's an example:

A driver working for a Minnesota-based carrier was cited in Texas for moving a permitted load half an hour before official sunrise, which is a violation. However, both the truck driver and the pilot car escort driver documented the time of the movement and that the time was legal. Subsequently, the citation/ticket was dismissed in court. The motor carrier then challenged the inspection record through FMCSA's data correction system, *Data Qs*. However, the issuing agency refused to remove the violation from the carrier's record and it continues to count toward the carrier's CSA 2010 score. This practice is commonplace in other states; agencies justify retaining such violations in the system as "a record of the investigating officer's observations."

This is a glaring example of some of the illogical and fundamental inequities in the CSA 2010 methodology. When a driver and/or motor carrier is vindicated in a court of law, the alleged violation should not count against the motor carrier in any way.

Inequitable Treatment of Flatbed Carriers

An additional concern is the disproportionate impact of CSA 2010 on flatbed and other open deck carriers. These carriers have a far higher risk than other carriers of being cited for load securement violations since the violations are more evident (visible) and because they typically have far more load securement requirements. This problem is especially acute given the fact that, as mentioned earlier, all load securement violations bear the maximum severity weight in the scoring system.

Because open deck carriers are placed in peer groups with van bodied carriers, their relative performance is often seen as worse - simply because they comply with tougher requirements and because their violations are more evident. There is a very simple way to address this clear inequity; in order to measure their relative safety performance these carriers should be placed into a peer group of like-type carriers.

Peer Groups

On that note, ATA strongly suggests that FMCSA consider modifying peer groups so that each carrier's relative safety performance is compared against others carriers with similar exposure. This approach would correct an inequity in the system – that carriers with great disparity in exposure to inspections and violations are compared against each other. For instance, long haul carriers are frequently inspected since inspection stations are common in their operating environment, though local pick up and delivery carriers are not. As a result, carriers who are rarely inspected may appear to be safer, since they have less opportunity to be found in violation.

Inconsistent State Enforcement

A pivotal problem with CSA 2010 is that it is based on data provided by state and local enforcement agencies with widely varying enforcement and reporting practices. For instance, one of our motor carriers calculated that two states were responsible for reporting 47% of its violations in the CSA 2010 data system, but only 19% of the carrier's miles were operated in those same states. Another motor carrier has provided us with data showing that officers in Indiana are four times more likely than neighboring states to report a speeding violation.

The same inconsistency holds true for the reporting of accidents. FMCSA struggles with obtaining timely, complete, crash reports from states and local jurisdictions. While the quality and timeliness of these reports have improved, there are still large gaps in accident reporting. For instance, according to the University of Michigan Transportation Research Institute, Kansas reports more than 80% of its qualifying crashes in the system, but fewer than 40% of qualifying crashes in Mississippi get reported.¹

The problems with inconsistent reporting are especially profound when you consider that CSA 2010 is a system that measures carriers based on relative safety performance. It is undoubtedly illogical and inappropriate to consider one carrier safer than another, simply because it predominately operates in the state of Mississippi.

We recognize that there is no easy or near term solution to this problem. We also applaud the efforts that FMCSA and CVSA are undertaking to improve the consistency, uniformity and

¹ University of Michigan Transportation Research Institute, Evaluation of 2008 Mississippi Crash Data Reported to the MCMIS Crash File. Blower, D., Matteson, A. (2010).
<http://www.umtri.umich.edu/content.php?id=2468&i=1&t=3S3Y9pULqBKqJyEDI>

reliability of state reported data. But is it important that FMCSA acknowledge and consider ways to address the wide variances in state enforcement if the agency intends to publicly label carriers as deficient based on comparative safety performance, especially when some carriers are measured in a harsher environment.

The Impact of CSA 2010's Flaws

ATA respects that no system will be perfect. We must stress, however, the pronounced impact that the aforementioned systemic flaws will have on motor carriers and on highway safety. From an enforcement perspective, these problems will cause FMCSA to wrongly target some carriers for intervention. While that presents an inequity for relatively safe carriers, it also presents a more important risk to highway safety - that some less safe carriers will escape scrutiny.

It is important to point out, though, that this impact is not limited to FMCSA interventions. Shippers, brokers, insurers and juries in highway accident cases will all use the system to make erroneous judgments about motor carriers.

Brokers, for instance, are especially sensitive to CSA 2010 scores. This sensitivity was heightened when an Illinois jury recently awarded a \$23.7 million judgment against freight broker C.H. Robinson Worldwide and other defendants for a fatal crash that occurred in April 2004. The plaintiffs successfully argued that C.H. Robinson should be liable for damages because they tendered a load to an unsafe carrier. Similar claims have been made against shippers for alleged negligent retention of unsafe motor carriers.

Brokers and shippers, to protect their own liability interests, could be very cautious to engage the services of a motor carrier labeled as "deficient" in some of the six publicly viewable categories measured in CSA 2010. This could be the case, even if the methodology is flawed or based on unsound data, because brokers will be fearful of their inability to educate juries on CSA 2010's shortcomings.

Highway accident litigation carries enormous financial exposure for motor carriers. An erroneous description of a motor carrier as having systemic safety problems can literally cost motor carriers millions of dollars in unfounded damage awards.

For years, FMCSA has made such safety data publicly available. The agency's reasoning is that doing so allows "...FMCSA to leverage the support of shippers, insurers and other interested stakeholders to ensure that motor carriers remain accountable for sustaining safe operations over time."² However, it compounds the certain impact of the system to employ the leverage of shippers, insurers and others based on a methodology that the agency has admitted needs fundamental improvement. Moreover, it is inconsistent with FMCSA's position that the primary purpose of CSA 2010 is to identify motor carriers for workload prioritization purposes.³

In addition, FMCSA has not yet initiated a rulemaking that will propose to assign safety fitness determinations (i.e., safety ratings) based on CSA 2010 scores. We anticipate that the rulemaking, slated to be published early next year, will set forth a standard for determining what constitutes an unfit, conditional, or marginal motor carrier. Absent this standard, third parties

² Letter from FMCSA Administrator Ferro to John Hausladen, President, Minnesota Trucking Association, June 8, 2010.

³ Ibid.

will make their own arbitrary judgments about motor carriers based on an incomplete understanding of the system.

FMCSA has, in the recent past, defended some of the flaws in the system by pointing to trend data showing that, more often than not, certain violations have a relationship to crashes. In short, the agency claims that there is predictive value in looking at certain violations, without regard to a causal relationship between the violations and crashes.

ATA agrees that such an approach is appropriate for the purpose of efficiently prioritizing agency enforcement resources. During an intervention, an investigator will be able to determine if the predictors were accurate and if the carrier really is safety deficient. But conversely, ATA believes it is inappropriate for FMCSA to publicly label a specific carrier as unsafe without such verification, based purely on trend data.

Conclusion

As stated at the outset, ATA fully supports the objectives of CSA 2010: targeting unsafe operators, changing their behavior, and removing the most egregious actors from the road. Moreover, a system that assesses each carrier's relative safety posture based on performance data is conceptually good. However, in practice, a system that is based on inconsistent data and a flawed scoring methodology will not achieve its objectives. Instead, it will create inequities for some safe carriers, and inappropriately allow some unsafe carriers to avoid scrutiny and consequences. In order to correct these problems, FMCSA must take two important steps.

First, the University of Michigan Transportation Research Institute (UMTRI) is currently in the process of conducting an evaluation study of CSA 2010 under contract to FMCSA. However, the report is not due to be submitted to FMCSA until December 2010, after the first stage of CSA 2010 is due to be implemented. Logically, CSA 2010 should be implemented after FMCSA has an opportunity to review this study's findings and recommendations, and the agency makes changes and improvements it believes are warranted.

Second, FMCSA should make the corrections based on ATA's three primary concerns before the initial implementation of CSA 2010 and before making the information publicly available. Using a system to target carriers for interventions, or worse - labeling carriers as safety deficient based on a methodology that the agency itself has acknowledged must be improved – is not good public policy.

Failing to take these two important steps would have a substantial impact on motor carriers and highway safety. In effect, FMCSA would use the flawed methodology and data to target some of the wrong carriers. Further, if the data and scores are made public, third parties would use the system to make inappropriate business decisions.

In short, any system based on evaluating motor carrier safety comparatively must be grounded in sound data, sound math, and consistent measurements to be both equitable and effective.

Thank you for the opportunity to testify on this important issue.

NUMBER OF WARNINGS ISSUED FOR MOVING VIOLATIONS BY STATE

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